Financial instruments in the OECD model tax convention

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Jan Weissbrodt

PROPOSITIONS

1. Financial instruments challenge the fundamental principles of income tax systems through their capability to extract the economic substance from real assets in a particularly efficient way.

2. Alternative legal sources and even other disciplines may, under specific circumstances, help to better understand the structural principles of financial instruments and, within the limits of correct methodology, to contribute to the interpretation of the OECD MTC.

3. The delimitation of income and capital in general (realisation principle) as well as that between dividends and interest in particular is purely legal in nature and, as such, can be justified by the economically driven substance-over-form principle only to a very limited extent.

4. Financial instruments can be classified unequivocally and consistently into the respective distributive articles by means of a test which can be interpreted from the OECD MTC as a structured mix of legal and economic differentiators, insofar as their autonomous components are universal, objective and thus generic.

5. Risk cannot actually be insured or resolved, but only financed and transferred.

6. The tax treatment of financial and digital aspects has multiple conceptual similarities, as both are intangible and universal categories and as such are embedded in various (tangible) matters.

7. The digital tax envisaged by some jurisdictions constitutes both a conceptual link between income tax and value added tax, as well as a shift of imposition towards the source and, as such, could also be applied to financial transactions (excise tax).

8. The structural interdependencies and differentiators identified in this study might help to maintain the OECD MTC on its existing (historical) basis until a fundamental reform of tax systems takes place and, to this extent, to adapt it to the challenges of modern financial instruments.